

DEPARTMENT OF TRANSPORTATION

DIVISION OF LOCAL ASSISTANCE – M.S. 1

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September 3, 2009

All Regional Transportation Planning Agencies:

Dear Executive Director:

In a July 6, 2009, letter the Division of Local Assistance provided direction on how the California Department of Transportation (Department) will implement senate bill (SB) 286 for Transportation Enhancement (TE) projects. The letter indicated that for projects within the roadway right of way, a project specific cost effectiveness analysis has to be submitted by project sponsors prior to using corps on TE projects. This letter is to communicate to you further guidance we received from Federal Highway Administration (FHWA).

On July 10, 2009, the Department submitted a request to FHWA to use the California Conservation Corps (CCC) on a non-competitive basis for an American Recovery and Reinvestment Act of 2009 (Recovery Act) TE project. In the attached August 12, 2009, response, FHWA concluded it could not authorize the use of Recovery Act funds for TE projects using CCC, citing section 1554 of the Recovery Act which states that, "to the maximum extent possible, contracts funded under the Act shall be awarded ...through the use of competitive procedures."

In summary:

Recovery Act TE funding will only be used on contracts awarded through competitive procedures, unless a justification can be provided that the project cannot be awarded by competitive bid and the justification is approved by FHWA.

For non-recovery act STIP TE projects, the Department will continue to work with FHWA to maximize the use of CCC and local corps. Guidance will be provided upon reaching consensus.

If you have any questions regarding this information please contact our TE Program Coordinator John Haynes at: (916) 653-8077 or his email at: john_haynes@dot.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Denix Anbiah".

DENIX ANBIAH, Chief
Division of Local Assistance

Attachments:

August 12, 2009-FHWA letter to Caltrans

cc:

SB 286 Committee Members

Martin Tuttle, Deputy Director, Planning and Model Programs

District Directors

Richard Harmon, Assistant Deputy Director, Division of Legislative Affairs

Rachel Falsetti, Chief, Division of Transportation Programming

Fardad Falakfarsa, Chief, Office of Federal Resources

Division of Local Assistance Office Chiefs

District Local Assistance Engineers

Headquarters Local Assistance Area Engineers

Walter Waidelich, FHWA

Karen Bobo, FHWA



U.S. Department
of Transportation
**Federal Highway
Administration**

**Federal Highway Administration
California Division**

August 12, 2009

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In Reply Refer To:
HDA-CA
Document #S52928

Mr. Randell Iwasaki, Director
California Department of Transportation
1120 N Street
Sacramento, CA 95814

Dear Mr. Iwasaki:

We have reviewed your July 10, 2009, request to use the California Conservation Corps (Corps), on a non-competitive basis, for planting native trees and shrubs on Interstate 5 from U.S. Highway 50 to the Yolo County Line. Based on our review, we have concluded that we cannot authorize the use of American Recovery and Reinvestment Act of 2009 (Recovery Act, Pub. L. 111-5) funds for this purpose. Section 1554 of the Recovery Act states that, "to the maximum extent possible, contracts funded under this Act shall be awarded ... through the use of competitive procedures." In addition to this near-mandate of the use of competitive bidding, Section 1606 of the Recovery Act requires the application of Davis Bacon prevailing wage rates to all Recovery Act-funded projects, both inside and outside the right-of-way.

In light of these statutory restrictions, and following our discussion on July 24, 2009, we agreed that Recovery Act funds for transportation enhancement projects would be used only on contracts awarded through competitive procedures. However, I am pleased to confirm that we have also agreed that it would be possible for projects of the kind included in your July 10, 2009 request to be funded using regular Federal-aid dollars, provided the State made the required demonstration of cost effectiveness per 23 CFR § 635.204. We look forward to working with you to complete the necessary steps to get these projects moving forward. We will need you to program the projects with regular Federal-aid funds, and for you to submit for our approval the cost effectiveness finding along with the cooperative agreement between Caltrans and the Corps for each project. This solution, we believe, is one that would comply with the law and satisfy both of our agencies' needs.

Please contact me at 916-498-5014 if you have any questions concerning this determination. .

Sincerely,

Walter C. Waidelich, Jr.
Division Administrator



Mr. Randell Iwasaki
August 12, 2009
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cc (Caltrans): Sri Balasubramanian, Randy Steen, John Haynes
cc (FHWA): Cindy Vigue; Matt Schmitz, Shawn Oliver, Karen Bobo, Brett Gainer,
Christopher Douwes; Michael Harkins